

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rule I pertaining to the Montana)	ADOPTION
Mortgage Loan Origination Disclosure)	
Form)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On August 15, 2011, the Department of Administration proposes to adopt the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 5, 2011, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The rule proposed to be adopted effective October 1, 2011, provides as follows:

NEW RULE I MONTANA MORTGAGE LOAN ORIGINATION DISCLOSURE FORM (1) Licensees shall use a form that is substantially similar to this and may customize the form to meet individual needs.

MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a Montana-licensed mortgage loan originator authorized to provide mortgage loan origination services to (borrower and co-borrower(s) name – printed) in connection with your real estate loan. Lender(s) whose loan products (name of licensee) distributes generally provide their loan products to (name of licensee) at a wholesale rate.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

1. (name of licensee) is acting as an independent contractor and not as your agent;
2. (name of licensee) enters into separate independent contractor agreement(s) with one or more lender(s); and
3. while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of every lender(s) or

investor(s) in the market and cannot guarantee the lowest price or best terms available in the market.

SECTION 2. OUR COMPENSATION.

1. The retail price (name of licensee) offers you may include (name of licensee's) compensation.

2. If you would rather pay a lower interest rate, you may pay higher up-front costs.

3. If you would rather pay less up front, you may pay all of (name of licensee's) compensation indirectly through a higher interest rate in which case (name of licensee) will be paid by the lender.

4. If you compensate (name of licensee) directly, (name of licensee) cannot be compensated by any other person for the same transaction.

By signing below, you acknowledge that you have received a copy of this disclosure.

BORROWER

DATE

CO-BORROWER

DATE

MORTGAGE LOAN ORIGINATOR

NMLS #

DATE

Employing Entity

NMLS #

The State of Montana, Department of Administration, Division of Banking and Financial Institutions (Division), is the licensing agency of mortgage lenders, mortgage brokers, mortgage servicers, and mortgage loan originators. Any consumer with a comment, question, or concern should contact the Division by the means listed within this disclosure.

(2) The disclosure must include the address, phone number, facsimile number, e-mail address, and web site of the division.

(3) The disclosure must include the unique identifier issued by the Nationwide Mortgage Licensing System and Registry for the mortgage broker and mortgage loan originator.

(4) The disclosure must be signed by the borrower and co-borrower, if any, and the mortgage loan originator.

AUTH: Ch. 317, L. 2011, Section 23; 32-9-130, MCA

IMP: Ch. 317, L. 2011, Section 23

STATEMENT OF REASONABLE NECESSITY: On September 24, 2010, the Board of Governors of the Federal Reserve System issued final rules regarding mortgage loan originator compensation. The new rules were adopted to implement the federal Truth in Lending Act and amended Regulation Z. The final rules became effective April 5, 2011. The rules provide that if a loan originator is compensated by a consumer directly, no other person may pay any compensation to the loan originator for that transaction. In addition, the rules prohibit any person from compensating a loan originator directly or indirectly based on the terms or conditions of the loan secured by a dwelling. See 12 CFR 226.36.

Prior to the passage of House Bill 90 (HB 90) in the 2011 Legislature, the Montana Mortgage Loan Originator Disclosure Form (MLOD form) was contained in the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act at 32-9-124(3), MCA. The MLOD form in statute conflicted with the new federal rules in the following respects.

The new federal rules do not allow a loan originator to be compensated by both the consumer and the lender. Paragraph one of the MLOD form may or may not be correct depending on whether the borrower compensates the loan originator or not. Paragraph two is correct only if the loan originator is compensated by either the borrower or the lender, but not both. Paragraph three of the MLOD form is not correct under the new federal rules because a loan originator cannot be compensated by both the consumer and the lender. The MLOD form was confusing consumers because it was inconsistent with the federal rules.

In light of the conflicts between the MLOD form and the new federal rules on loan originator compensation, the Governor issued an amendatory veto of HB 90 on April 7, 2011. HB 90, with the Governor's proposed amendments, was passed by both houses of the 2011 Legislature. It was signed by Governor Schweitzer on May 5, 2011. The amendatory veto removed the MLOD form from statute [32-9-124(3), MCA] and gave the division rulemaking authority to adopt a form by rule.

The division is adopting this form because it complies with 12 CFR 226.36. The division has taken the old MLOD form that was in statute and modified it to conform to the federal rules. Those portions of the MLOD form that do not conflict with the federal rules are being maintained in the proposed form. The proposed form also updates the old MLOD form by requiring the unique identifier, not the state license number, of the loan originator. Since the licensing of all loan originators is now done on the Nationwide Mortgage Licensing System (NMLS), the state no longer issues license numbers. NMLS unique identifiers are used instead. Some language of the old MLOD form has been updated for ease of reading.

This rule is intended to be effective October 1, 2011, to coincide with the effective date of HB 90.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov; and must be received no later than 5:00 p.m., August 12, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above at the above address no later than 5:00 p.m., August 12, 2011.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 15 persons based on the number of licensed mortgage brokers and mortgage loan originators employed by mortgage brokers.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Walter McNutt, was contacted by mail on May 20, 2011.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 5, 2011.